

ORDINANCE NO. 46-803

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A LOAN GUARANTY AGREEMENT BY AND AMONG THE CITY OF WICHITA, KANSAS, COMMUNITY DEVELOPERS OF WICHITA, LLC, AND COMMERCIAL FEDERAL BANK, AND AUTHORIZING PLACEMENT OF PUBLIC FUNDS IN A CERTIFICATE OF DEPOSIT IN CONNECTION WITH SUCH AGREEMENT.

WHEREAS, the City of Wichita, Kansas (the "City") is authorized by Article 12, Section 5, of the Kansas Constitution to determine, by ordinance, its local affairs and government; and,

WHEREAS, the City has heretofore found and determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas to take action to assist in the financing and development of a grocery store project, located at 2404 E. 13th Street within the City's corporate limits; and,

WHEREAS, COMMUNITY DEVELOPERS OF WICHITA, LLC (the "Borrower") has been identified as the entity that will serve as developer of the grocery store project; and,

WHEREAS, in connection with its financing arrangements for construction of the grocery store project, the Borrower has found it necessary to obtain a 24-month loan from Commercial Federal Bank (the "Lender"), in the aggregate principal amount of \$644,000 (the "Loan"); and,

WHEREAS, the Lender is willing to originate the Loan requested by the Borrower only if the City agrees to furnish a Loan Guaranty Agreement to secure the Loan's repayment and any accrued interest thereon, supported by an allocation of Community Development Block Grant ("CDBG") funds and a deposit of \$700,000 in public funds in a certificate of deposit with the Lender, to provide additional security in the event CDBG funds become unavailable; and,

WHEREAS the City finds and determines that it is necessary and desirable in connection with the development of the grocery store project at 2404 E. 13th Street to enter into the Loan Guaranty Agreement, and to authorize and provide for the execution and delivery of the same, and the initiation of the necessary deposit (subject to applicable requirements of Kansas statutes) by ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Authorization of the Loan Guaranty Agreement. The Mayor or Vice Mayor of the City of Wichita, Kansas is hereby authorized and directed to execute the Loan Guaranty Agreement for and on behalf of and as the act and deed of the City, in substantially the form presented with this Ordinance, with such minor corrections or amendments thereto as the Mayor or Vice Mayor shall approve (which approval shall be evidenced by his execution thereof) and any such other documents, certificates and instruments as may be necessary or desirable to carry

out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Loan Guaranty Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance. The City Clerk or other appropriate staff of the City may deliver the Loan Guaranty Agreement following approval and signature by the Lender and Borrower, and concurrent with the closing of the Loan.

Section 2. Designation of Depository and Authorization of Certificate of Deposit. The governing body hereby designates Commercial Federal Bank to serve as a designated depository of municipal funds, pursuant to K.S.A. 9-1401, which deposits are to be secured by pledges of acceptable securities, as provided by K.S.A. 9-1402 and K.S.A. 9-1405, all as amended, including specifically a Federal Home Loan Bank letter of credit in an amount equal to 105% of the amount of the City funds on deposit (and the City's investment and collateral policies shall be modified as necessary to provide for the acceptance of such letters of credit as security for funds on deposit). The City Treasurer and/or Cash Manager are hereby authorized and directed to deposit \$700,000 with Commercial Federal Bank in an appropriately secured certificate of deposit, on or before the closing date of the Loan to the Borrower. The authorized term of the certificate of deposit shall extend to December 29, 2006, and, to the extent funds are available for such purpose in the appropriated 2007 Budget of the City on that date, the City Treasurer and/or Cash Manager is hereby authorized and directed to renew the certificate of deposit, subject to reduction in amount for any reduction that has been made in the outstanding Loan balance (providing such renewal can be effected at an interest rate no less favorable than the original interest rate), for an additional term expiring one day after the expiration of the 24-month term of the Loan to the Borrower.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Loan Guaranty Agreement and certificate of deposit all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 1st day of November, 2005.

CITY OF WICHITA, KANSAS

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney